MONTANA LEGISLATIVE HISTORY

Chapter 407 1997

Bill H 457 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Feb 18	✓ C	Hearing Date(s)	Mar 22	✓ C
No minutes were found reflecting action taken.		C		Mar 30	✓ C
		C			C
		C			C
Date Out	Feb 18	✓ C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HOUSE BILL NO. 457

INTRODUCED BY VINCENT

BY REQUEST OF THE ATTORNEY GENERAL

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE POWERS OF THE ATTORNEY GENERAL AND COUNTY ATTORNEYS UNDER THE MONTANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT; AMENDING SECTION 85-416, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-416, R.C.M. 1947, is amended to read as follows:

"85-416. Assistance and actions by county attorney -- reports. It is the duty of the county attorney to lend to the department such assistance as the department may request in the commencement and prosecution of actions pursuant to this act~~, or,~~ ~~the~~ The county attorney or the attorney general may ~~institute~~ initiate all procedures and prosecute actions in the same manner as provided for the department. If an action is prosecuted by the county attorney alone, he shall notify the department as to the nature of the action and the parties to the action within thirty (30) days of the filing of the action. The county attorney shall make a report thereon to the department within thirty (30) days of the final disposition of the matter."

Section 2. This act shall be effective upon passage and approval.

-End-

REPRESENTATIVE SCULLY:
We are talking about two notices. There was a great deal of pro and con discussion about this.

The hearing closed on House Bill #763.

THE HEARING OPENED ON HOUSE BILL 457:

REPRESENTATIVE VINCENT, DISTRICT #78:
This bill is to clear up the language and clarify the actual duties of the county attorney and the attorney general. If an action is prosecuted by the county attorney alone, he shall notify the department as to the nature of the action and the parties to the action within 30 days of the filing of the action. The county attorney shall make a report to the department within 30 days of the final disposition of the matter.

HAROLD PITTS:
I am opposing because of the personal interest I have in the consumer act. I was the director of the Department of Business Regulation. We took the act and put it into effect and it has worked. I think this would be a mistake. I don't think this would be in the best interest of the consumer. He went on to talk about a book published by this department, "BE AN OPEN-EYED CONSUMER", to educate people to be a better consumer. I would appreciate your killing this bill.

REPRESENTATIVE TEAGUE made several comments about the book and praised the content and said it was an excellent book.

REPRESENTATIVE SCULLY asked Mr. Pitts. Who is the attorney for the state of Montana?

MR. PITTS:
I presume it would be the attorney general.

MR. McGRATH, ATTORNEY GENERALS OFFICE:
This is our bill. We are in support of it. We like it. We are not interested in taking over the Department of Business Regulation. The bill will just clarify the powers of the county attorney. All this does is say that the supervisor also has the same authority as the county attorneys. We have no desire to usurp the authority of the department. This bill would avoid unnecessary litigation as to his authority.

REPRESENTATIVE SCULLY:
This bill will be one of many. I have had cases, such as smart-pak, in which no one has coordinated the investigation. Each individual county would handle their own small portion. He explained the case and how it was a fraudulent scheme and how it took a great deal of

cooperation between the counties and the attorney general to stop it. There is no way that a county attorney can go across state lines. I think this is a very proper bill. Had this bill been in effect about a year ago, we would not have had so much trouble in stopping the smart-pak scheme. I would really support the legislation.

DICK DISNEY, CONSUMER AFFAIRS DIVISION, DEPT. OF BUSINESS REGULATION:
I think the title is simply misleading. In 25-4116, it is legislatin to clarify something that doesn't exist. We fear it will create another duplication of effort. He also mentioned the coordination of the smart-pak operation, and how his department had been instrumental in bringing it to a head.

REPRESENTATIVE VINCENT:
I think the issue is consumer protection. It is an effort to clarify the role for the prosecution of fraud.

REPRESENTATIVE SCULLY asked Mr. Disney about the role of the departmer in the smart-pak operation.

MR. DISNEY:
He explained about the sales force and a Mr. Duncan, how they had had many telephone calls from people and that they had filed the investigative demand. He went on in some detail how they had conducte the investigation with the help of various county attorneys.

REPRESENTATIVE SCULLY asked Mr. Disney how many cases of criminal prosecution his department had handled.

MR. DISNEY:
We do not have criminal authority. We head up the consumer protection division and have set up a consumer cooperative effort in many states. I would like to point out the fact that I have seen in larger states there are separate groups going their own way. I will repeat the fact that you are duplicating an effort.

MR. McGRATH:
We are only interested in criminal prosecution. We feel that we need the authority to go ahead with these investigations. I think you might get objections from the county attorneys office.

REPRESENTATIVE ROTH:
It seems to me that the consumer protection people are doing a good job. You already have authority over criminal activity.

MR McGRATH:
We do not have the authority as set forth in the statutes, it is merely presumed. We would like to have it set forth in the law. We don't

want to have to fight in court of who has the authority.

REPRESENTATIVE COURTNEY asked Mr. Disney to state how he felt th would be a duplication of services.

MR. DISNEY said there would be duplication in the fact that the attorney general and his office would be doing the same investig that the department of business regulation now does.

After a rather heated discussion between Mr. Disney and Represen Scully the hearing closed on House Bill 457.

The meeting adjourned at 12:05.

JOHN P. SCULLY, CHAIRMAN

Mary Ellen Connelly

Mary Ellen connelly, Secretary

They are usually subject to review under the Administrative Procedures Act. There is not really a definition of state agency. Whatever is adopted on page 2 should be also adopted on page 4.

Glen Drake, representing the League of Cities and Towns, said that he was not really an opponent as such but that they oppose the amendment that Rep. Meloy has proposed.

There were no other proponents or opponents present. After questions by committee members, the Chairman asked if the committee was ready to act on the bill.

Sen. Towe moved to strike "agency" and insert "board, bureau, commission, department, authority, agency, or office of the state" on page 2, line 11, and on page 4, line 7. The motion carried unanimously. He then moved that HB 718 as amended BE CONCURRED IN. The motion carried unanimously.

CONSIDERATION OF HOUSE BILL 457:

Rep. Vincent of District 78 at Bozeman said that a representative from the office of the Attorney General, Mike McGrath, would carry the bill for him as he had introduced it at their request.

Mike McGrath, a staff attorney in the Attorney General's office, said that this bill amends the unfair and deceptive trade practices act. It gives the Attorney General the same authority that the county attorneys have, as sometimes the Attorney General's office has to assist them in the area with which this bill deals. He said that they are not interested in taking over the Department of Public Regulations, but they are interested in working with them. There has been some lack of understanding during the meetings.

Dick Disney, administrator of the Community Affairs Division, said that they are talking about a duplication of effort here. By putting another function into the office of the Attorney General, it is going to create confusion among the county attorneys.

Harold Pitts, testifying as a private system, said that he has a great deal of interest in the Department of Business Regulatio as he was administrator of that department for the last four years until he resigned. He said that they worked very hard to develop the program and that one of the first statements the new Attorney General made when he took office was that he was going to have this under his department. They were going to educate the public in consumer protection work and about deceptive advertising practices. It is not necessary for two departments to handle this program.

Rep. Vincent said at this time that he did not want to get involved in the Attorney General part of this. His only interest is in doing the best for the people of Montana, and that he can see tha the county attorneys and the Attorney General's office is the way to go in some fraud cases. Montana needs to have an active effort for consumer protection.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 30, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, on the above date at 9:45 a.m. in Room 442 of the State Capitol Building.

ROLL CALL:

All members of the committee were present except Senator Roberts who was excused to attend another hearing.

EXECUTIVE SESSION

HB 498 - Sen. Turnage offered amendments to this bill for consideration by the committee. Sen. Towe then moved the adoption of all of the amendments. (See Attach. #1) Sen. Lensink voted "No" on amendment #9. Other than the one "No" vote on amendment #9, the motion carried unanimously. Sen. Olson then moved that HB 498 as amended BE CONCURRED IN. The motion carried unanimously.

HB 457 - Sen. Olson moved the adoption of the amendments. (See Attach. #2) The motion carried unanimously. Sen. Towe then moved that HB 457 as amended BE CONCURRED IN. The motion carried unanimously.

At this time, Senators Towe and Warden were excused to attend other meetings. (10:00 a.m.) Sen. Towe returned as the meeting was delayed.

HB 200 - Sen. Olson moved that HB 200 be tabled. The motion carried unanimously.

HB 782 - Sen. Regan moved that HB 782 BE NOT CONCURRED IN. The motion carried with Senators Lensink and Olson voting "No". The vote was 5 - 2 with Towe, Turnage, Murray, Regan and Warden voting "Yes". Sen. Warden's vote on this bill was obtained during the afternoon session of the Senate as she was excused from this meeting before this vote. Sen. Roberts was also excused during this meeting

HB 334 - Sen. Lensink moved to strike section 3, subsection (2) and section 4, following "filed". The motion carried unanimously. (The committee will act on this bill at the meeting on 3/31/77.)

There being no further business before the committee at this time, the committee adjourned at 11:05 a.m..

Jean A. Turnage

SENATOR JEAN A. TURNAGE, Chairman

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REFERENCE BILL